

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Reexamination of Roaming Obligations) WT Docket No. 05-265
of Commercial Mobile Radio Service)
Providers)
)

To: The Commission

**COMMENTS OF
SOUTHERNLINC WIRELESS**

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Dated: November 28, 2005

EXECUTIVE SUMMARY

As the Commission is aware, SouthernLINC Wireless has experienced great difficulty over the years in its attempts to negotiate a roaming arrangement with Nextel (prior to its recent merger with Sprint) and its partially-owned affiliate Nextel Partners. To this day, SouthernLINC Wireless, virtually their only iDEN-based competitor in the United States, has no roaming agreement with Nextel Partners and only a limited, non-reciprocal arrangement with Sprint Nextel itself, for which SouthernLINC Wireless must pay rates that substantially exceed those typical in the industry. These practices demonstrate not only the existence of market failure in the provision and availability of roaming for iDEN carriers but also are indicative of both current and potential future market failure in the provision and availability of roaming for all wireless services, regardless of platform or technology.

According to Dr. R. Preston McAfee, Professor of Business, Economics and Management at the California Institute of Technology, a distinction must be made between the market for retail CMRS services, in which there is robust competition, and the market for wholesale CMRS services such as roaming, where monopoly and duopoly situations prevail and the conditions for market failure are established. As set forth in the attached Report by Dr. McAfee, distinct CMRS technologies, such as CDMA, GSM, and iDEN, compete head-on for retail consumers, whereas in wholesale markets these distinct technologies are not substitutes for each other, thus substantially limiting the options that CMRS carriers have for obtaining roaming services in a given geographic area. This relative lack of competition in the wholesale roaming market gives the large nationwide CMRS carriers the ability to unfairly leverage their nationwide coverage capabilities to the detriment of unaffiliated regional carriers through anticompetitive roaming prices and practices.

These practices not only harm regional and rural CMRS carriers, but they also cause direct harm to consumers by inhibiting competition, removing incentives for the development and deployment of innovative new services and technologies, and keeping roaming rates artificially high. More significantly, these practices harm consumers by restricting the availability of and access to mobile wireless communications services. As described in more detail in these comments, access to mobile wireless services confers significant benefits to both consumers and to the nation as a whole in areas ranging from the economy to public safety and national security. The importance of wireless communications has been graphically (and all too frequently) illustrated by large-scale emergencies – such as Hurricanes Katrina, Rita, and Wilma – where the availability of wireless communication meant the difference between life and death for many people. Given this significance, the availability of wireless communication is far too important to be left subject to the whim of market forces. Therefore, the Commission cannot ignore the failure of the market to make services such as automatic roaming available to all wireless consumers.

The existence of robust retail competition provides the Commission with a relatively simple and straightforward means of determining whether a carrier's roaming practices are reasonable or reflect an improper exercise of market power at the wholesale level. Specifically, the Commission should adopt the presumption that if a carrier charges wholesale roaming rates in a region that exceed its own lowest prevailing retail rates, these roaming rates would presumptively be considered unjust and unreasonable.

This underlying presumption based on wholesale and retail rates provides a simple, efficient, and effective mechanism for assessing, adjudicating, and remedying roaming issues and disputes. The Commission would be able to make a straightforward comparison using

publicly available retail price information, thus minimizing the need for or burdens of obtaining and analyzing confidential carrier cost information and eliminating the need to conduct complex cost analysis or studies.

With this presumption as a fair and efficient analytical tool, SouthernLINC Wireless urges the Commission to adopt the following three-prong approach to ensure the development and availability of automatic roaming services and to ensure that all U.S. consumers have equal access to wireless services:

- The Commission should adopt a rule requiring all CMRS carriers to provide automatic *inbound* roaming for all services to any requesting technologically compatible carrier at reasonable rates and on reasonable and nondiscriminatory terms and conditions.
- The Commission should modify its Section 208 complaint process and adopt appropriate evidentiary presumptions regarding claims made under Sections 201 and 202 that reflect the public interest need for roaming and the goals of the automatic roaming obligations, as well as appropriate procedures to ensure that its actions and decisions under this process are sufficiently timely to meet the demands of the fast-moving wireless market.
- The Commission should adopt appropriate measures for enforcing the automatic roaming obligations, including, but not limited to, forfeitures and enforceable orders compelling carriers to enter into and conduct good faith roaming negotiations.

These proposals, which are described in greater detail in Section IX of these comments, are designed to ensure the availability of automatic roaming services through the most efficient and least intrusive means possible and are premised on the basic dichotomy between wholesale and retail CMRS services described in the McAfee Report. SouthernLINC Wireless submits that these proposals strike an appropriate balance between the public interest need to ensure the availability of roaming for mobile wireless services while still providing carriers ample flexibility to make appropriate business decisions in a competitive market.

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To: The Commission

COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SouthernLINC Wireless") hereby submits its comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding regarding the roaming obligations of commercial mobile radio service (CMRS) providers.¹

SouthernLINC Wireless is pleased that the Commission recognizes that, in light of significant changes in the CMRS industry, including industry consolidation and major shifts in the type and nature of CMRS services themselves, it has become necessary to revisit the current regulatory and market landscape for roaming services.

As a general matter, SouthernLINC Wireless believes that competitive markets, including the retail CMRS market, function most effectively when subject to minimal regulatory intervention. SouthernLINC Wireless would prefer to be able to address issues such as

¹ / *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Notice of Proposed Rulemaking, FCC 05-160 (rel. August 31, 2005) ("*NPRM*").

automatic roaming through commercial negotiation between carriers and has been attempting to do just this for over ten years. But true commercial negotiation can only occur when all relevant aspects of the market are, in fact, competitive which, as discussed herein, is not the case with respect to automatic roaming.

In addition, SouthernLINC Wireless notes that wireless communication is not simply a consumer commodity such as paint or office supplies. Rather, wireless communication plays a vital role in consumer welfare, economic growth, public safety, and national security. These are the type of concerns that led to the creation of this Commission over seventy years ago in order to ensure that *all* Americans have ready access to the types of communications services that meet their various needs. The importance of wireless communications has been graphically (and all too frequently) illustrated by large-scale emergencies – such as Hurricanes Katrina, Rita, and Wilma – where the availability of wireless communication meant the difference between life and death for many people. Given this significance, the availability of wireless communication is far too important to be left subject to the whim of market forces. Therefore, the Commission cannot ignore the failure of the market to make services such as automatic roaming available to all wireless consumers. SouthernLINC Wireless urges the Commission to take immediate action to remedy this situation through the adoption of the automatic roaming obligations discussed herein.

Given this urgent need for action, SouthernLINC Wireless applauds the Commission's decision to adopt the current *NPRM* and looks forward to an outcome that will address the issue of automatic roaming in such a way as to protect and promote important public interest needs, such as consumer access to mobile wireless services and the development of a reliable nationwide communications infrastructure, while fostering fair competition and the continued

development of new, innovative, and competitive wireless communications services and technologies.

OVERVIEW:

SouthernLINC Wireless' Roaming Proposal is Pro-Competitive, In the Public Interest, Fair, and Easy to Administer and Enforce

As the Commission is aware, the availability of roaming is an issue of great importance for SouthernLINC Wireless, and SouthernLINC Wireless has long been an active participant in the Commission's roaming proceedings.² Most recently, SouthernLINC Wireless submitted comments and made *ex parte* presentations in the Commission's Sprint/Nextel merger review proceeding in which it emphasized roaming as an essential component of the wireless market.³

As set forth in detail in numerous submissions in various proceedings, SouthernLINC Wireless has experienced great difficulty over the years in its attempts to negotiate a roaming arrangement with Nextel (prior to its recent merger with Sprint) and its partially-owned affiliate Nextel Partners. To this day, SouthernLINC Wireless, virtually their only iDEN-based competitor in the United States, has no roaming agreement with Nextel Partners and only a limited, non-reciprocal arrangement with Sprint Nextel itself, for which SouthernLINC Wireless must pay rates that substantially exceed those typical in the industry. These practices demonstrate not only the existence of market failure in the provision and availability of roaming for iDEN carriers but also are indicative of both current and potential future market failure in the

² / See, e.g., Comments, Reply Comments, and *ex parte* filings made by SouthernLINC Wireless in the Commission's proceedings on *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, and *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193.

³ / *Applications of Nextel Communications, Inc. Transferor, and Sprint Corporation, Transferee, For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63 ("*Sprint/Nextel Merger Application*"), Comments of SouthernLINC Wireless (March 30, 2005). A copy of this filing is included as Attachment A to these comments.

provision and availability of roaming for all wireless services, regardless of platform or technology.

The basis of market failure in the provision of roaming services is explained by Dr. R. Preston McAfee, Professor of Business, Economics and Management at the California Institute of Technology, in his report provided herein as Attachment B.⁴ In his report, Dr. McAfee explains the difference between the market for retail CMRS services, in which there is robust competition, and the market for wholesale CMRS services such as roaming, where monopoly and duopoly situations prevail. According to Dr. McAfee, the main reason for this difference is that distinct CMRS technologies, such as CDMA, GSM, and iDEN, compete head-on for retail consumers, whereas in wholesale markets, these distinct technologies are not substitutes for each other, thus substantially limiting the options that CMRS carriers have for obtaining roaming services in a given geographic area. As explained in the McAfee Report, this relative lack of competition in the wholesale roaming market gives the large nationwide CMRS carriers the ability to unfairly leverage their nationwide coverage capabilities to the detriment of unaffiliated regional carriers through anticompetitive roaming prices and practices.

These practices not only harm regional and rural CMRS carriers, but they also cause direct harm to consumers by inhibiting competition, removing incentives for the development and deployment of innovative new services and technologies, and keeping roaming rates artificially high. More significantly, these practices harm consumers by restricting the availability of and access to mobile wireless communications services. As described in more detail in these comments, access to mobile wireless services confers significant benefits to both consumers and to the nation as a whole in areas ranging from the economy to public safety and

⁴ / Dr. R. Preston McAfee, "The Economics of Wholesale Roaming in CMRS Markets" ("McAfee Report"). A copy of this report is provided as Attachment B to these comments.

national security. The roles of the nationwide carriers on the one hand and of the regional carriers on the other in the establishment for “all the people of the United States” an efficient, nationwide communications service⁵ are, as discussed herein, distinct yet complementary and equally essential. However, these roles – as well as the resultant economic and public benefits – can only be fully realized if access to all mobile wireless services is available to all U.S. consumers through automatic roaming. Market forces alone have thus far failed to provide such access, and it is therefore necessary for the Commission to take action.

The existence of robust retail competition provides the Commission with a relatively simple and straightforward means of determining whether a carrier’s roaming practices are reasonable or reflect an improper exercise of market power at the wholesale level. As explained in the McAfee Report, prevailing retail rates in a competitive market are those that are voluntarily offered to the public and which implicitly cover both the costs of providing the service, as well as a reasonable profit for the carrier. The Commission should therefore adopt the presumption that if a carrier charges wholesale roaming rates in a region that exceed its own lowest prevailing retail rates, these roaming rates would presumptively be considered unjust and unreasonable and would thus violate Section 201 of the Act.

This underlying presumption based on wholesale and retail rates provides a simple, efficient, and effective mechanism for assessing, adjudicating, and remedying roaming issues and disputes. The Commission would be able to make a straightforward comparison using publicly available retail price information, thus minimizing the need for or burdens of obtaining and analyzing confidential carrier cost information and eliminating the need to conduct any complex cost analysis or studies.

⁵ / See 47 U.S.C. § 1.

With this presumption as a fair and efficient analytical tool, SouthernLINC Wireless urges the Commission to adopt the following three-prong approach to ensure the development and availability of automatic roaming services and to ensure that all U.S. consumers have equal access to wireless services:

- The Commission should adopt a rule requiring all CMRS carriers to provide automatic *inbound* roaming for all services to any requesting technologically compatible carrier at reasonable rates and on reasonable and nondiscriminatory terms and conditions.
- The Commission should modify its Section 208 complaint process and adopt appropriate evidentiary presumptions regarding claims made under Sections 201 and 202 that reflect the public interest need for roaming and the goals of the automatic roaming obligations, as well as appropriate procedures to ensure that its actions and decisions under this process are sufficiently timely to meet the demands of the fast-moving wireless market.
- The Commission should adopt appropriate measures for enforcing the automatic roaming obligations, including, but not limited to, forfeitures and enforceable orders compelling carriers to enter into and conduct good faith roaming negotiations.

These proposals, which are described and discussed in greater detail in Section IX of these comments, are designed to ensure the availability of automatic roaming services through the most efficient and least intrusive means possible and are premised on the basic dichotomy between wholesale and retail CMRS services described in the McAfee Report. SouthernLINC Wireless submits that these proposals strike an appropriate balance between the public interest need to ensure the availability of roaming for mobile wireless services while still providing carriers ample flexibility to make appropriate business decisions in a competitive market.

I. SOUTHERNLINC WIRELESS

SouthernLINC Wireless is a wholly owned subsidiary of Southern Company.

SouthernLINC Wireless operates a commercial digital 800 MHz ESMR system using Motorola's

proprietary Integrated Digital Enhanced Network (iDEN) technology to provide dispatch, interconnected voice, Internet access, and data transmission services over the same handset.

SouthernLINC Wireless provides these services to approximately 300,000 subscribers in a 127,000 square mile service territory covering Georgia, Alabama, southeastern Mississippi, and the panhandle of Florida. SouthernLINC Wireless offers the most comprehensive geographic coverage of any mobile wireless service provider in Alabama and Georgia, serving the extensive rural territory within its footprint as well as major metropolitan areas and highway corridors. Because of its expansive and reliable coverage within the region, SouthernLINC Wireless' service is widely used by local and statewide public safety agencies, school districts, rural local governments, public utilities, and emergency services such as ambulance companies. It is also utilized by commercial entities and other government entities in both urban and rural areas.

II. AN OVERVIEW OF ROAMING

The Commission has long recognized that roaming is a vital component of a competitive CMRS market and plays an essential role both in encouraging the development and deployment of advanced wireless services and in making these services available to as many U.S. consumers as possible. For example, the Commission determined in 1996 that roaming is "a critical element of CMRS service"⁶ and, as stated in the *NPRM*, concluded that "ubiquitous roaming on CMRS systems is important to the development of a seamless, nationwide 'network of networks'," a conclusion which the Commission later affirmed in 2000.⁷ The availability of

⁶ / *NPRM* at ¶ 21.

⁷ / *Id.* at ¶ 8 (internal citations omitted).

roaming has also been a significant component of the Commission's public interest analysis of the recent mergers between some of the nation's largest CMRS carriers.⁸

However, despite its acknowledgement of the significance of roaming to the CMRS market and to the interests of consumers, the Commission has taken no significant action on any roaming issue in nearly ten years, preferring instead to allow the availability of roaming – particularly automatic roaming – to be “regulated” by market forces. However, as discussed below in these comments, as well as in numerous filings made over the past ten years, SouthernLINC Wireless has experienced extensive and ongoing difficulties in its efforts to obtain roaming services for its customers, demonstrating that “market regulation” has not been sufficient in making roaming services available for consumers.

During this past decade, the CMRS market itself has developed and changed significantly, experiencing tremendous subscriber growth, significant shifts in the type and nature of mobile wireless services themselves (as data, PTT, and other wireless services have gained greater prominence), and industry consolidation and concentration. This latter trend shows no signs of abating⁹ and will only add to and exacerbate the existing failure of market forces to serve as an effective guarantor of roaming service for consumers. These factors underscore the need for Commission action to ensure the availability of roaming services to

⁸ / See, e.g., *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, Memorandum Opinion and Order, 19 FCC Rcd 21522 (2004) (“*Cingular/AT&T Merger Order*”); See also *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, FCC 05-148 (rel. August 8, 2005) (“*Sprint Nextel Merger Order*”); *Application of Western Wireless Corporation and ALLTEL Corporation*, WT Docket No. 05-50, Memorandum Opinion and Order, FCC 05-138 (rel. July 19, 2005) (“*ALLTEL Merger Order*”).

⁹ / See, e.g., Jesse Drucker, *Alltel to Acquire Midwest Wireless for \$1.08 Billion*, Wall Street Journal, Nov. 18, 2005, at C.3; Arshad Mohammed, *Sprint Nextel Agrees to Buy Texas Affiliate*, Wash. Post, Nov. 22, 2005, at D04.

consumers and to promote the Commission's stated vision of a "seamless, nationwide 'network of networks'."

A. The Commission's Statutory Authority and Responsibility to Ensure the Availability of CMRS Roaming

The Commission determined nearly ten years ago that CMRS roaming is a common carrier service subject to the common carrier provisions of Title II of the Communications Act.¹⁰ As the Commission stated in the *NPRM*, the provisioning of roaming services by CMRS carriers is therefore subject to the prohibitions under Section 201 of the Act against unjust and unreasonable charges or practices, as well as to the nondiscrimination requirements of Section 202 of the Act, and complaints and enforcement actions regarding such roaming practices are thus covered by the complaint process set forth in Section 208 of the Act.¹¹ The Commission therefore has not only the statutory authority but also the statutory responsibility to ensure the availability of roaming under reasonable and nondiscriminatory rates, terms, and conditions.

However, as discussed in more detail below in these comments, the Section 208 complaint process is an inadequate remedy regarding roaming disputes, and without a mandatory requirement that a carrier provide automatic roaming, the uncertainty of pursuing a complaint under the current complaint process has presented a barrier to any enforcement action or other measures that would put a halt to unfair roaming practices. Therefore, the Commission must adopt additional measures, including an automatic roaming rule, to make the statutory mandates of Sections 201 and 202 meaningful and ensure the availability of roaming services for U.S. consumers.

¹⁰ / See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462 (1996) ("*1996 Order and Roaming NPRM*"); See also 47 U.S.C. §§ 201, 202, and 208.

¹¹ / *NPRM* at ¶¶ 2, 34.

B. The Commission's Regulatory Approach: Manual Roaming and Market Forces

In the *NPRM*, the Commission stated that, in 1996, it extended the manual roaming requirement to broadband PCS, SMR, and other CMRS services upon determining that "the availability of roaming on broadband wireless networks was important to the development of nationwide, ubiquitous, and competitive wireless voice communications."¹² This action resulted in the adoption of the "manual roaming rule," codified as Section 20.12 of the Commission's Rules, 47 C.F.R. § 20.12(c).

Currently, Section 20.12(c) of the Commission's Rules requires CMRS carriers to provide "mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee's licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations."¹³ When this rule was initially adopted, the Commission apparently intended that it require only the provision of manual roaming, but not automatic roaming. It is worth noting, though, that this limitation does not appear in the actual text of the rule itself.

In 1996, the Commission initiated the first of what was to become a series of requests for comment on whether to adopt a rule on the provision of automatic roaming services.¹⁴ This proceeding was followed by a new rulemaking proceeding in 2000 in which the Commission

¹² / *Id.* at ¶ 5.

¹³ / 47 C.F.R. § 20.12(c).

¹⁴ / *1996 Order and Roaming NPRM*, 11 FCC Rcd 9462.

again raised the issue of whether an automatic roaming rule should be adopted.¹⁵ However, the Commission declined to adopt such a rule, opting instead to leave the availability of automatic roaming as a matter to be determined through market competition.

According to the Commission, roaming rates and roaming revenues have declined as a result of competition in the CMRS market, and competitive market forces have made automatic roaming increasingly available.¹⁶ SouthernLINC Wireless has certainly not shared in this experience, and recent filings in the Commission's roaming and merger review dockets indicate that other carriers have increasingly lost out on this experience as well.¹⁷ Therefore, if the Commission is correct in its underlying assumption that market competition makes automatic roaming readily available, then a carrier's refusal to provide such roaming for all wireless services – or to even provide roaming at all – must mean that the level of true market competition is insufficient (*i.e.*, there is market failure) or that the carrier is engaging in anticompetitive conduct. Given that such practices are in fact occurring, market forces are clearly not sufficient to ensure the availability of CMRS roaming, thus underscoring the need for Commission action.

III. SOUTHERNLINC WIRELESS' EFFORTS TO OBTAIN REASONABLE ROAMING ARRANGEMENTS

SouthernLINC Wireless faces particular challenges with respect to roaming due to its use of Motorola's proprietary Integrated Digital Enhanced Network (iDEN) technology and air interface platform. This technology enables SouthernLINC Wireless to provide reliable, high-

¹⁵ / *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193, Notice of Proposed Rulemaking, 15 FCC Rcd 21628 (2000) ("2000 CMRS Roaming NPRM").

¹⁶ / *See, e.g., Cingular/AT&T Merger Order*, 19 FCC Rcd at 21588 – 21589 ¶¶ 173 – 174.

¹⁷ / *See, e.g., Leap Wireless International, Inc. (Leap Wireless)*, WT Docket No. 00-193, *Ex Parte*, filed July 12, 2005; *See also Leap Wireless Ex Parte*, filed August 17, 2005.

quality advanced wireless services, including interconnected voice, digital dispatch/PTT, and data services, all over a single customer handset. However, as an iDEN carrier, SouthernLINC Wireless' only potential domestic roaming partners are Sprint Nextel and, while it remains a separate company, Nextel Partners.¹⁸ Currently, Sprint Nextel and Nextel Partners provide each other with reciprocal roaming for the full range of iDEN voice, data and digital dispatch services and provide similar roaming services to customers of foreign iDEN carriers as well.¹⁹ Yet Nextel has consistently denied equivalent roaming services to customers of SouthernLINC Wireless, while Nextel Partners continues to deny SouthernLINC Wireless customers access to any roaming services whatsoever.

As described in detail in its previous submissions in this proceeding, and as acknowledged by the Commission in its *NPRM*,²⁰ SouthernLINC Wireless has had great difficulty over the years in separate attempts to negotiate a roaming agreement with either Nextel

¹⁸ / As the Commission is aware, the Sprint Nextel merger triggered a contractual "put" option – which has since been exercised – that compels Sprint Nextel to buy all of the outstanding shares of Nextel Partners that it does not already own. Although the exact timing of this buyout is unclear, pending the resolution of certain disputes between the parties, it will nevertheless result in Sprint Nextel becoming the sole source of roaming options for SouthernLINC Wireless and its customers.

SouthernLINC Wireless notes that there are two small wireless carriers that operate in the Western United States using the "Harmony" platform, a proprietary Motorola platform that is based on iDEN technology and which operates on a smaller-scale network. See Motorola's "Harmony" website at http://www.motorola.com/governmentandenterprise/northamerica/en-us/public/functions/browseproduct/productdetailpage.aspx?navigationpath=id_804i/id_2476i (last visited Nov. 28, 2005). These carriers do not provide a viable roaming solution for SouthernLINC Wireless' customers, since their coverage areas are extremely small and geographically remote. Additionally, neither of these carriers have been able to negotiate a roaming agreement with either Sprint Nextel or Nextel Partners.

¹⁹ / Sprint Nextel provides roaming for the full suite of iDEN services – including voice, PTT, and data – to customers of iDEN carriers based in Canada and Latin America. In fact, Sprint Nextel has had a reciprocal automatic roaming arrangement with Canada's Telus (formerly Clearnet Communications) since 1997, four full years before Nextel made either manual or automatic roaming available to customers of SouthernLINC Wireless.

²⁰ / *NPRM* at ¶¶ 15, 37.

or Nextel Partners.²¹ Rather than repeat all of the details from these previous submissions, none of which has ever been seriously challenged by either Nextel or Nextel Partners, SouthernLINC Wireless hereby submits into the record and provides as Attachment A to these comments a copy of the initial comments it filed in response to the proposed Sprint/Nextel merger, which provides more specific detail regarding SouthernLINC Wireless' efforts to obtain roaming arrangements with Nextel and Nextel Partners.

To this day, SouthernLINC Wireless still has no roaming agreement with Nextel Partners. It has only a limited, non-reciprocal arrangement with Sprint Nextel itself that requires SouthernLINC Wireless to pay excessive rates that are substantially above Nextel's own retail service rates. This arrangement also restricts SouthernLINC Wireless customers to voice roaming only, while denying them entirely the digital dispatch and data roaming services Sprint Nextel provides to customers of Nextel Partners, as well as to customers of foreign iDEN carriers. Furthermore, Nextel (prior to the merger) chose not to permit its own customers to roam on SouthernLINC Wireless' network at all – and objected to Nextel Partners doing so – consequently depriving these consumers of wireless access in areas of the Southeastern United States served by SouthernLINC Wireless, but not by Sprint Nextel (by either their legacy iDEN or CDMA networks) or by Nextel Partners.

²¹ / See, e.g., Comments, Reply Comments, and *ex parte* filings made by SouthernLINC Wireless in the Commission's proceeding on the *Sprint/Nextel Merger Application*; See also Comments, Reply Comments, and *ex parte* submissions made by SouthernLINC Wireless regarding the *1996 Order and Roaming NPRM* (CC Docket No. 94-54) and the *2000 CMRS Roaming NPRM* (WT Docket No. 00-193); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 05-71, Tenth Report, FCC 05-173 (rel. Sept. 30, 2005) ("*Tenth CMRS Market Competition Report*"). SouthernLINC Wireless hereby incorporates all of its these submissions in these dockets into the record of the present proceeding.

Based on its experiences with Nextel prior to its recent merger with Sprint, SouthernLINC Wireless is concerned that Sprint Nextel may take the position that it does not have any obligation (or intention) to roam with SouthernLINC Wireless on terms equivalent to its other roaming partners. For its part, Nextel Partners, having exercised its option to compel a full buyout by Sprint Nextel, is effectively no longer in a position to discuss roaming possibilities with SouthernLINC Wireless. Even if it were, Nextel and Nextel Partners, despite being independent businesses, have historically coordinated their responses to SouthernLINC Wireless' multiple requests to obtain roaming and, pursuant to a joint operating agreement that is still in effect, have coordinated to allocate their iDEN sales territories and to insulate each other from competition in the market for iDEN services.²² SouthernLINC Wireless does not expect any changes in this concerted refusal to deal while the buyout of Nextel Partners remains pending.

On the basis of these experiences, SouthernLINC Wireless believes that market forces alone have not proven sufficient to ensure that roaming is available to all wireless customers. Both Sprint Nextel and, while it remains a separate company, Nextel Partners have a strong motivation to withhold roaming as a means of placing SouthernLINC Wireless – virtually their only iDEN competitor – at a competitive disadvantage. This competitive motive has outweighed the benefit that they could provide their own subscribers by allowing them to receive roaming service in areas of the Southeastern United States that are not covered by their own networks.

²² / On July 5, 2005, Nextel Partners filed a lawsuit in the public docket of the New York Supreme Court against Nextel alleging violations of the joint operating agreement between Nextel and Nextel Partners. In connection with the Sprint/Nextel merger review proceeding, SouthernLINC Wireless submitted to the Commission for inclusion in the record of that proceeding a copy of the Nextel Partners complaint, which describes the relevant portions of the joint operating agreement. See *Ex Parte* Submission of SouthernLINC Wireless, WT Docket No. 05-63, filed July 18, 2005.

As a result, the current situation in the market for iDEN roaming services is not one of marketplace competition. It is, if anything, a state of market failure. As the wireless industry continues to develop and consolidate, it is a certainty that, absent enforceable obligations regarding roaming, market failure will soon occur throughout the industry with respect to the availability of roaming for voice, data, PTT, and other wireless services.

IV. THE NEED FOR AUTOMATIC ROAMING

As stated above, the Commission determined as far back as 1996 that roaming is “a critical element of CMRS service.”²³ This conclusion remains true today. It is only through roaming that *all* consumers are able to obtain access to mobile wireless services nationwide while ensuring that such services are deployed as widely as possible, conferring significant benefits to both consumers and the nation as a whole in areas ranging from the economy to public safety and national security.

Although the service areas of the nationwide CMRS carriers cover large portions of the United States, there are many areas of the country that they do not reach, including not only rural and remote regions but also smaller population centers not located near major highways. This segment of the population is far greater than the Commission’s annual CMRS Market Competition Reports would suggest. The Commission’s finding in the recently-released *Tenth CMRS Market Competition Report* that 97 percent of the total U.S. population lives in counties where three or more CMRS carriers are operating does not mean that 97 percent of the population actually has access to service from three or more carriers.²⁴ Furthermore, this finding does not take into account that these services are, by their nature, mobile, and that there are numerous consumers who may live in areas covered by three or more CMRS operators but who,

²³ / NPRM at ¶ 21.

²⁴ / See, e.g., *Tenth CMRS Market Competition Report* at ¶¶ 2, 41.

for a variety of reasons (e.g., work, travel, etc.) either want or need access to wireless services while in more underserved areas.

The Commission acknowledges that, for purposes of its market competition reports, if a carrier serves even just a small portion of a county – such as along a highway that cuts through the corner of the county – then the Commission counts that carrier as serving the entire county, regardless of how many residents of the county actually have access to its service.²⁵ This flawed methodology creates a dangerously inaccurate picture of the true extent of consumer options for wireless services available to a significant number of U.S. consumers.²⁶

Although the Commission's effort to quantify the extent of competition down to the county level for purposes of the Commission's Market Competition Reports is certainly commendable, this approach is inherently flawed and, as the Commission itself cautioned, it does not accurately reflect the reality faced by consumers in these areas.²⁷ Therefore, data based on this methodology is insufficiently reliable to be considered in the context of a rulemaking proceeding and should not be given any persuasive weight or value in the Commission's consideration of the impact of the availability of roaming for U.S. consumers.

A. Roaming Provides Equal Access to Wireless Services for All U.S. Consumers

A long-standing tenet of Commission policy has been that U.S. consumers should have equal access to communications services. This principle is delineated in Section 1 of the

²⁵ / *Id.* at ¶ 14.

²⁶ / In a separate statement issued in conjunction with the *Tenth CMRS Market Competition Report*, Commissioner Copps identified this as a specific concern that he had regarding the Report.

²⁷ / *Tenth CMRS Market Competition Report* at ¶ 14 (“Therefore, our analysis overstates to some unknown and unavoidable degree the total coverage in terms of both geographic areas and population covered.”).

Communications Act²⁸ and has since been embodied through such diverse policies as universal service, nondiscriminatory interconnection obligations, and the Commission's ongoing efforts to bridge the "digital divide." Within the context of commercial mobile wireless services, the only effective way to achieve this policy goal is through the adoption of an automatic roaming rule.

As discussed above, while the service areas of the nationwide CMRS carriers cover large portions of the United States, there are many areas of the country that are not covered by their networks, including not only rural and remote regions but also smaller population centers not located near major highways. U.S. consumers located in these areas must instead rely on smaller regional and rural CMRS carriers in order to receive wireless service, whether they live and work in the area or are just passing through.

Nationwide carriers are able to utilize roaming agreements with these regional carriers to fill in holes in their own coverage and to effectively expand the geographic area in which *their* customers can receive service without incurring the significant expense of building out additional network facilities and obtaining additional spectrum. As a result, their customers are generally able to receive wireless service throughout the United States, even when they find themselves in areas not served by their own carrier's network.

The situation is reversed for U.S. consumers who live and work in the areas not covered by the networks of the nationwide carriers. If these consumers want to receive any wireless service at all, their choice is a regional or rural carrier who has built and who operates the networks that actually serves the area. However, if they travel outside of their carrier's network service area, they cannot receive any wireless service whatsoever if roaming is not available to them, thus restricting their access to wireless service to a relatively small area and denying them

²⁸ / 47 U.S.C. § 1.

wireless service entirely if they travel too far from home. As a result, absent roaming, these consumers do not have equal access to communications services as compared to those in larger markets, and they are effectively disadvantaged by the more limited mobility of the mobile wireless service available to them.

More serious roaming limitations exist for data and other wireless services, such as “push-to-talk,” which are becoming an ever-increasingly important component of the broader mobile services market. SouthernLINC Wireless, along with many regional and rural carriers, has expressed grave concern over the ability to obtain such roaming services, and the unavailability of roaming for data and other wireless services for these carriers’ customers could place consumers, businesses, and enterprises in rural or underserved areas on the wrong side of a “wireless divide” similar to (and even compounding) the “digital divide” in broadband services that the U.S. Government has been attempting to eliminate.

Even in areas covered by multiple carriers, the availability of roaming may be affected by other factors such as underlying carrier platforms – *e.g.*, CDMA, GSM, iDEN, etc. – which can limit the extent to which consumers are able to receive roaming service when they travel or find themselves located outside of their “home” areas. Many consumers in these areas also have specific service needs that may be best met by a regional carrier, but the inability to roam would effectively force these consumers to compromise their local service needs for more expansive coverage, or vice versa. These consumers would be just as effectively disadvantaged with respect to access to communications services as those in more outlying areas.

As discussed in more detail below, wireless services – including voice, data, PTT, and other services – have a significant impact on the U.S. economy, and this impact is projected to grow exponentially in just the next decade. Without roaming, consumers, enterprises, and

organizations located in rural or underserved areas would be placed at a significant economic and competitive disadvantage simply because of geography. In addition, this disadvantage would extend to those who frequently operate in or otherwise travel to or through such areas and to those with specific local service needs not met by all or most CMRS carriers. With roaming, however, these consumers (and, in turn, these regions) will be able to take equal advantage of the same economic benefits, thus increasing the overall benefit of wireless services to the U.S. economy as a whole.

B. Wireless Spectrum is a Limited Resource

One of the arguments that has often been made against the adoption of a roaming rule is that such a rule would lessen or eliminate the incentives smaller wireless carriers would otherwise have to build out their own physical networks and infrastructure in order to expand their service area. This flimsy argument ignores the fact that the essential component of wireless service – wireless spectrum – is a finite, limited resource.

Only a limited number of licenses allowing the use of CMRS spectrum are available in any given geographic area, and in many parts of the country – particularly in and around larger primary and secondary markets – there are simply no more licenses available for new market entrants. Although the Commission now allows service providers to obtain licenses or lease spectrum on the secondary market, these measures still cannot overcome the fact that there is only so much spectrum available, and many of those licensees who currently hold spectrum require this spectrum for their own needs. For example, carriers require additional spectrum capacity in order to roll out their new mobile broadband platforms. Accordingly, it is highly unlikely that competitors who control spectrum would be willing to lease it to new entrants. As a result, to the extent a potential market entrant is even able to find a party willing to either sell